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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROY O'GUINN,

Plaintiff,

v.

ISIDRO BACA, *et al.*,

Defendants.

Case No.: 3:18-cv-00469-MMD-WGC

ORDER

Re: ECF No. 38

Before the court is Plaintiff's "Amended Appointment for Counsel, Motion" (ECF No. 38). Plaintiff bases his motion on the fact that (1) he is unable to "understand and law work is not done by this plaintiff," (2) on March 8, 1981, "plaintiff was substantially disabled by a 1980 Plymouth Volare going 50 mph on the Park City, Utah off-ramp off of I-80 east. My skull, brain was greatly damaged by severe cerebral contusion and an extreme traumatic brain injury that did include traumatic encephalopathy and my brain was greatly increased in its size," (3) Plaintiff "had many in-prison assaults to my head mainly rt. side," (4) the "dangerous symptoms have been in my life since 1981 and been recurring since 12-18-17 and 5-30-21," and (5) "this case is medical and does involve much damage to a 66 yr. old disabled man who is daily experiencing deep pains inside my head that come close to a state of unconsciousness while the pain is substantial." (*Id.*) Plaintiff also claims he has "many neurological disorders and that I cannot be an attorney." (*Id.*)

1 On December 7, 2020, Chief District Judge Miranda M. Du entered her order regarding
2 Plaintiff's first request for the appointment of counsel (ECF No. 19), which stated in part:

3 Although Plaintiff stated a colorable failure to protect claim against
4 Defendants Baca and Buchanan, that determination was based on allegations
5 and not evidence. Plaintiff has not yet shown a likelihood of success on the
6 merits, and it is premature for the Court to assess whether exceptional
7 circumstances exist. Plaintiff appears to understand what claims are
proceeding in this case. The Court therefore denies the motion for
appointment of counsel without prejudice to Plaintiff later seeking
appointment of counsel if the case does not settle in mediation, the stay is
lifted, and *Plaintiff shows exceptional circumstances*.

8 (ECF No. 22 at 2; emphasis added.)

9 While the court recognizes Plaintiff claims to have certain medical issues, any *pro se*
10 inmate such as Mr. O'Guinn would likely benefit from services of counsel, that is not the standard
11 this court must employ in determining whether counsel should be appointed.
12 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

13 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
14 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme
15 Court has generally stated that although Congress provided relief for violation of one's civil rights
16 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
17 federal court and not a right to discover such claims or even to litigate them effectively once filed
18 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

19 In very limited circumstances, federal courts are empowered to request an attorney to
20 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
21 however, are exceedingly rare, and as Chief District Judge Du advised Plaintiff earlier, the court
22 will grant the request only under exceptional circumstances or extraordinary circumstances.

1 *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v.*
2 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

3 A finding of such exceptional or extraordinary circumstances requires that the court
4 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to
5 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
6 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
7 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Plaintiff has shown an ability to
8 articulate his claims including successfully appealing the dismissal of his case to the Ninth Circuit
9 Court of Appeals. (ECF No. 18.)

10 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

11 If all that was required to establish successfully the
12 complexity of the relevant issues was a demonstration of
13 the need for development of further facts, practically all
14 cases would involve complex legal issues. Thus,
15 although *Wilborn* may have found it difficult to
16 articulate his claims *pro se*, he has neither demonstrated
17 a likelihood of success on the merits nor shown that the
18 complexity of the issues involved was sufficient to
19 require designation of counsel.

20 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
21 the request for appointment of counsel because the Plaintiff failed to establish the case was
22 complex as to facts or law. 789 F.2d at 1331.

23 The substantive claims involved in this action are not unduly complex. Plaintiff's First
Amended Complaint was allowed to proceed on the failure to protect claims against Defendants
Buchanan and Baca. (ECF Nos. 18 and 22.) These claims are not so complex that counsel needs
to be appointed to prosecute them.

1 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
2 the likelihood of success on the merits of his claims. Plaintiff has not provided any evidence, nor
3 has he made any argument in his motion for appointment of counsel, showing that he is likely to
4 prevail on the merits of his claim.

5 In the exercise of the court's discretion, it **DENIES** Plaintiff's Amended Motion for
6 Appointment of Counsel (ECF No. 38).

7 **IT IS SO ORDERED.**

8 Dated: July 13, 2021.

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WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE